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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re A.S., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JOANN D. et al.,

Defendants and Appellants.

D055750

(Super. Ct. No. J514663B)

APPEALS from an order of the Superior Court of San Diego County, Gary M.
Bubis, Judge. Affirmed.

Joann D. and Jeremy S. (together the parents) appeal a juvenile court order
terminating parental rights to their minor son, A.S., under Welfare and Institutions Code
section 366.26.¹ The parents challenge the sufficiency of the evidence to support the

¹ Statutory references are to the Welfare and Institutions Code.

court's finding the sibling relationship exception to adoption did not apply to preclude terminating their parental rights. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

In October 2007 the San Diego County Health and Human Services Agency (Agency) filed a petition in the juvenile court alleging five-year-old A.S. had suffered serious physical harm inflicted nonaccidentally by Joann. (§ 300, subd. (a).) Specifically, the petition alleged Joann used excessive discipline by spanking A.S. and causing bruising to his face and lower back. Additionally, Joann had a history of physically abusing A.S., and had received voluntary services from August 2006 to July 2007. Agency also filed a petition on behalf of A.S.'s 10-year-old half sister, A.B., who is not a subject of this appeal. Agency detained A.S. with his maternal grandparents and detained A.B. with paternal relatives.

In an interview with the social worker, Joann admitted spanking A.S. but said she was unaware of causing any marks or bruising. She was arrested and charged with willfully inflicting injury on a child. Joann had previous arrests for drug-related crimes, and had a history of methamphetamine and alcohol abuse. She had not consistently parented A.B. since the child was five years old. Jeremy had an extensive criminal history, including drug offenses, disorderly conduct, battery and spousal abuse. At the time A.S. was detained, Jeremy was in a residential drug treatment program.

At a jurisdiction and disposition hearing, the court sustained the allegations of the petition, declared A.S. a dependent, removed him from parental custody and placed him

with relatives. The court ordered the parents to comply with their case plans, which included supervised visits with A.S.

Two months later, the parents were involved in a violent confrontation at Joann's home. Jeremy was arrested. Joann tested positive for alcohol on two occasions. She minimized the domestic violence incident. Although she was visiting A.S. and A.B., she often ended visits early. She interacted with the children as a peer rather than a parent. Jeremy had a visit with A.S. through a glass partition at the jail, but asked to end the visit after 20 minutes.

In April 2008 Agency removed A.S. from the home of his maternal grandparents and placed him with Laurie B. A.B. continued to live with her paternal grandfather. The children had frequent contact as arranged by their respective caregivers. At a six-month review hearing, the court ordered six more months of services for Joann.

According to a 12-month review report, Jeremy remained incarcerated. Joann had completed some of her services, but had not participated in therapy for the past six months. A.S. was doing well in Laurie's home and said he wanted to stay there forever. In the social worker's opinion, Joann's life was unstable and she needed to show significant parenting changes in order to provide A.S. with a safe home. Joann lacked the necessary parenting skills to redirect A.S. without resorting to physical abuse. The social worker recommended the court terminate services and set a section 366.26 selection and implementation hearing.

Agency's addendum report noted Joann had resumed therapy, completed drug treatment and was in an aftercare program. A.S. told his therapist he was fearful of being

hit by Joann again. He continued to tell Laurie he wanted to live with her forever. A.S. was reluctant to visit Joann and did not want to talk to her on the telephone. At a 12-month hearing in March 2009 the court terminated services and set a section 366.26 selection and implementation hearing.

Agency recommended adoption as A.S.'s permanent plan. The social worker assessed A.S. as both generally and specifically adoptable. Laurie was meeting all of A.S.'s physical and emotional needs and had been approved to adopt him. In the social worker's opinion, neither Joann nor Jeremy had established a parent-child bond with A.S. Although A.S. continued to have weekly supervised visits with Joann, he resisted seeing her and remained fearful of her physical abuse as well as her substance abuse. He believed she would never change, and did not feel safe being alone with her. A.S. was not comfortable seeing Jeremy and did not want to live with him because he did not know him well enough.

The social worker noted A.S. and A.B. had been in separate placements from October 2002 to June 2003, and had not lived together for the past 20 months. An antagonism seemed to exist between them. Their caregivers initiated visits for them.² A.S. looked forward to seeing A.B. and had a great time with her. However, he did not ask to see A.B. between visits, and would not talk to her on the telephone.

At a contested selection and implementation hearing, the court received into evidence Agency's reports and heard the social worker's testimony. The court found A.S.

² A.B. had by then been returned to the custody of her father.

was adoptable and none of the statutory exceptions to adoption applied. The court terminated parental rights and referred A.S. for adoptive placement.

DISCUSSION

The parents challenge the sufficiency of the evidence to support the court's finding the beneficial sibling relationship exception to adoption did not apply. They assert A.S. and A.B. lived together for a substantial period of time and have a meaningful relationship, and A.S.'s interest in continuing the sibling relationship outweighs the benefits of adoption for him. The parents further assert A.S.'s caregiver gave no assurances that she would continue sibling contact once she adopted A.S.

A

We review the judgment for substantial evidence. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. We do not consider the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if there is substantial evidence supporting a contrary finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52; *In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) The parent has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

B

After reunification services are terminated, the focus of a dependency proceeding shifts from preserving the family to promoting the best interests of the child, including the child's interest in a stable, permanent placement that allows the caregiver to make a full emotional commitment to the child. (*In re Fernando M.* (2006) 138 Cal.App.4th 529, 534.) At the selection and implementation hearing, the court has three options: (1) terminate parental rights and order adoption as the permanent plan; (2) appoint a legal guardian for the child; or (3) order the child placed in long-term foster care. (*Ibid.*)

"Adoption, where possible, is the permanent plan preferred by the Legislature." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 573.) If the court finds a child cannot be returned to his or her parent and is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds termination of parental rights would be detrimental to the child under one of several specified exceptions. (§ 366.26, subds. (c)(1)(A), (B)(i)-(vi); *In re Erik P.* (2002) 104 Cal.App.4th 395, 401.)

The sibling relationship exception to terminating parental rights applies when the juvenile court finds there is a compelling reason for determining termination would be detrimental to the child because it would substantially interfere with that child's sibling relationship. (§ 366.26, subd. (c)(1)(B)(v).) Factors to be considered include the nature and extent of the relationship, whether the child was raised with a sibling in the same home and whether the child has strong bonds with a sibling. The court must also consider whether ongoing contact is in the child's best interests, including the child's long-term emotional interest, as compared to the benefit of legal permanence through

adoption. (*Ibid.*) The purpose of this exception is to preserve long-standing sibling relationships that "serve as anchors for dependent children whose lives are in turmoil." (*In re Erik P.*, *supra*, 104 Cal.App.4th at p. 404.)

"The sibling relationship exception contains strong language creating a heavy burden for the party opposing adoption." (*In re Daniel H.* (2002) 99 Cal.App.4th 804, 813.) Similar to the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(B)(i), application of the sibling relationship exception requires a balancing of interests. (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 951.) The parent must first show: (1) the existence of a significant sibling relationship; (2) terminating parental rights would substantially interfere with that relationship; and (3) it would be detrimental to the child if the relationship ended. (*Id.* at p. 952.) After the parent shows a sibling relationship is so strong that its severance would be detrimental to the adoptive child, the court then decides whether the benefit to the child of continuing the sibling relationship outweighs the benefits of adoption. (*Id.* at pp. 952-953; *In re Naomi P.* (2005) 132 Cal.App.4th 808, 823.)

C

Here, A.S. and A.B. lived together in the same dysfunctional home for several years, but they had been in separate placements from October 2002 to June 2003, and again from October 2007 to the present. Although A.S. enjoyed his time with A.B., he did not ask about her between visits and did not want to talk to her on the telephone.

Indeed, the social worker noted an antagonism between A.S. and A.B.³ Based on the evidence, the court could reasonably infer the sibling relationship was not so significant as to constitute a "compelling reason" to order a permanent plan other than adoption for A.S. (§ 366.26, subds. (c)(1), (c)(1)(B)(v).) The parents did not meet their burden of showing it would be detrimental to A.S. if his relationship with A.B. ended. (*In re Eric P.*, *supra*, 104 Cal.App.4th at p. 402.)

Further, the evidence showed Laurie was willing to maintain the sibling relationship. Although, as the parents argue, there are no guarantees sibling contact will continue after A.S. is adopted, this factor is not determinative. Under the proper legal analysis of section 366.26, subdivision (c)(1)(B)(v), there was no showing termination of parental rights would substantially interfere with the sibling relationship. (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 952.)

The evidence amply supports a finding the benefit to A.S. of continuing the sibling relationship was outweighed by the benefits he would realize through adoption. A.S. wants to be adopted by Laurie, who is committed to providing him a safe, stable and permanent home. Substantial evidence supports the court's finding the exception of section 366.26, subdivision (c)(1)(B)(v) did not apply to preclude terminating parental

³ Although this could be characterized as typical sibling rivalry, there is no other evidence that A.S. and A.B. have a sibling bond. Nothing in the record supports the parents' position that A.S.'s long-term emotional and psychological well-being depends on his ability to maintain contact with A.B.

rights. (See *In re Celine R.* (2003) 31 Cal.4th 45, 61-62; *In re L.Y.L.*, *supra*,
101 Cal.App.4th at p. 952.)

DISPOSITION

The order is affirmed.

O'ROURKE, J.

WE CONCUR:

HUFFMAN, Acting P. J.

McDONALD, J.